

## LEGISLATIVE BILL 16

Approved by the Governor March 19, 2004

Introduced by Brashear, 4

AN ACT relating to business entities; to amend sections 21-2204, 21-2209, 21-2607, 21-2631, 21-2639, 67-454, 67-456, and 67-458, Reissue Revised Statutes of Nebraska; to change filing requirements for businesses engaged in professional services as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 21-2204, Reissue Revised Statutes of Nebraska, is amended to read:

21-2204. (1) One or more individuals residing within the State of Nebraska, each of whom is licensed or otherwise legally authorized to render the same professional service, may, by filing articles of incorporation and a certificate of registration with the Secretary of State, organize and become a shareholder in a professional corporation. The articles of incorporation shall conform to the requirements of section 21-2018 and the certificate of registration shall conform to the requirements of sections 21-2216 to 21-2218.

(2) In addition to the requirements of subsection (1) of this section, the articles of incorporation shall contain a statement of the profession to be practiced by the corporation.

Sec. 2. Section 21-2209, Reissue Revised Statutes of Nebraska, is amended to read:

21-2209. (1) A professional corporation may provide professional services in another jurisdiction if such corporation complies with all applicable laws of such jurisdiction regulating the rendering of professional services. Notwithstanding any other provision of the Nebraska Professional Corporation Act, no shareholder, director, officer, employee, or agent of a professional corporation shall be required to be licensed to render professional services in this state or to reside in this state if such shareholder, director, officer, employee, or agent does not render professional services in this state and is licensed in one or more states, territories of the United States, or the District of Columbia to render a professional service described in the professional corporation's articles of incorporation.

(2) A foreign professional corporation shall not transact business in this state unless it renders one of the professional services specified in subdivision (3) of section 21-2202 and complies with the provisions of the act, including, without limitation, registration with the appropriate regulating board in this state as provided in sections 21-2216 to 21-2218. A foreign professional corporation shall not transact business in this state if the laws of the jurisdiction under which such foreign professional corporation is incorporated do not allow for a professional corporation incorporated under the laws of this state to transact business in such jurisdiction.

(3) (a) A foreign professional corporation shall (i) apply for a certificate of authority in the same manner as a foreign business corporation pursuant to sections 21-20,168 to 21-20,181 and (ii) file with the Secretary of State a current certificate of registration as provided in sections 21-2216 to 21-2218.

(b) Except as otherwise provided in the Nebraska Professional Corporation Act, foreign professional corporations shall enjoy all the powers, benefits, and privileges and shall be subject to all the duties, restrictions, and liabilities of a foreign business corporation under sections 21-301 to 21-325 and the Business Corporation Act.

(c) A foreign professional corporation shall not be required as a condition to obtaining a certificate of authority to have all of its shareholders, directors, and officers licensed to render professional services in this state if all of its shareholders, directors, and officers, except the secretary and assistant secretary, are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in its articles of incorporation and any shareholder, director, officer, employee, or agent who renders professional services within this state on behalf of the foreign professional corporation is licensed to render professional services in this state.

(d) A foreign professional corporation shall not be required to obtain a certificate of authority to transact business in this state unless it maintains or intends to maintain an office in this state for the conduct of

business or professional practice.

(4) For purposes of this section, foreign professional corporation shall mean a corporation which is organized under the law of any other state or territory of the United States or the District of Columbia for the specific purpose of rendering professional services and which has as its shareholders only individuals who are duly licensed or otherwise legally authorized to render the same professional services as the corporation.

Sec. 3. Section 21-2607, Reissue Revised Statutes of Nebraska, is amended to read:

21-2607. (1) Duplicate originals of the articles of organization of a limited liability company shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the limited liability company is organized to render professional services, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such articles of organization and fees. If the Secretary of State finds that the articles of organization conform to law, ~~he or she~~ and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(a) Endorse on each of the duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals and any registration certificate, if applicable, in his or her office; and

(c) Issue a certificate of organization to which he or she shall affix the other duplicate original.

(2) The certificate of organization, together with a duplicate original of the articles of organization affixed to it by the Secretary of State, shall be returned to the principal office of the limited liability company or to its representative.

Sec. 4. Section 21-2631, Reissue Revised Statutes of Nebraska, is amended to read:

21-2631. (1) Each member, manager, employee, or agent of a limited liability company organized under the Limited Liability Company Act who renders professional services shall hold a valid license or otherwise be duly authorized to render those professional services under the law of this state if such person renders professional services within this state or under the law of the state, territory, or other jurisdiction in which such person renders those professional services.

(2) Before rendering professional services, the limited liability company shall ~~(1)-(a)~~ (a) (i) file with the Secretary of State a registration certificate issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member as of the last day of the month preceding the filing, and ~~(b)~~ (ii) certify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise authorized to perform the professional services for which the limited liability company is organized or ~~(2)~~ (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-2631.01.

(3) The registration certificate requirements of this section and sections 21-2631.01 to 21-2632 shall apply to both domestic and foreign limited liability companies.

Sec. 5. Section 21-2639, Reissue Revised Statutes of Nebraska, is amended to read:

21-2639. The original and a duplicate original of the application of a foreign limited liability company for a certificate of authority shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the foreign limited liability company is organized to render professional services, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such application and fees. If the Secretary of State finds that the application conforms to law, ~~he or she~~ and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(1) Endorse on each of such documents the word filed and the month, day, and year of the filing thereof;

(2) File in his or her office the original of the application and any registration certificate, if applicable; and

(3) Issue a certificate of authority to transact business in this state to which he or she shall affix the duplicate original of the application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the Secretary of State, shall be returned to the principal office of the foreign limited liability company or

its representative.

Sec. 6. Section 67-454, Reissue Revised Statutes of Nebraska, is amended to read:

67-454. (1) A partnership may become a limited liability partnership pursuant to this section.

(2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(3) After the approval required by subsection (2) of this section, a partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of State. The statement must contain:

(a) The name of the partnership;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;

(c) If the partnership does not have an office in this state, the name and street address of the partnership's agent for service of process;

(d) A statement that the partnership elects to be a limited liability partnership; and

(e) A deferred effective date, if any.

(4) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(5) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(6) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3) of this section.

(7) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(8) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(9) Any limited liability partnership engaging in the practice of law in this state shall file with the Secretary of State, along with its statement of qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the limited liability partnership with its annual report required by section 67-456.

Sec. 7. Section 67-456, Reissue Revised Statutes of Nebraska, is amended to read:

67-456. (1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the Secretary of State which contains:

(a) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) If the partnership does not have an office in this state, the name and street address of the partnership's current agent for service of process.

(2) Any limited liability partnership, or foreign limited liability partnership authorized to transact business in this state, engaging in the practice of law in this state shall file with its annual report a current certificate of authority from the Nebraska Supreme Court.

(3) An annual report and certificate of authority, if applicable, must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

~~(3)~~ (4) The Secretary of State may revoke the statement of qualification of a partnership that fails to file an annual report and certificate of authority, if applicable, when due or pay the required filing fee provided in section 67-462. To do so, the Secretary of State shall provide the partnership at least sixty days' written notice of intent to

revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report or certificate of authority, if applicable, that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report and certificate of authority, if applicable, is filed and the fee is paid before the effective date of the revocation.

~~(4)~~ (5) A revocation under subsection ~~(3)~~ (4) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

~~(5)~~ (6) A partnership whose statement of qualification has been revoked may apply to the Secretary of State for reinstatement within two years after the effective date of the revocation. The application must state:

(a) The name of the partnership and the effective date of the revocation; and

(b) That the ground for revocation either did not exist or has been corrected.

~~(6)~~ (7) A reinstatement under subsection ~~(5)~~ (6) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

Sec. 8. Section 67-458, Reissue Revised Statutes of Nebraska, is amended to read:

67-458. (1) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(a) The name of the foreign limited liability partnership which (i) satisfies the requirements of the state or other jurisdiction under whose law it is formed, (ii) ends with "registered limited liability partnership", "limited liability partnership", "R.L.L.P.", "RLLP", "L.L.P.", "LLP", or similar words or abbreviations as required by the jurisdiction under whose law it is formed, and (iii) complies with the requirements of a domestic limited liability partnership as provided in subdivisions (1)(b) and (c) and subsection (2) of section 67-455;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(c) If there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process; and

(d) A deferred effective date, if any.

(2) The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(3) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(4) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(5) Any foreign limited liability partnership engaged in the practice of law in this state shall file with the Secretary of State, along with its statement of foreign qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the foreign limited liability partnership with its annual report required by section 67-456.

Sec. 9. Original sections 21-2204, 21-2209, 21-2607, 21-2631, 21-2639, 67-454, 67-456, and 67-458, Reissue Revised Statutes of Nebraska, are repealed.